United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the
District of Columbia Circuit
FILED FEB 12 1958
Joseph W. Stewart
CLERK

No. 14,280

983

LLOYD DAVIS,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Washington, D. C. ROBERT I. THIEL Printer EX 3-0625

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JOINT APPENDIX

1 [Filed in Open Court May 6, 1957]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Impanelled February 28, 1957, Sworn in on March 5, 1957

The United States of America	:	Criminal No. 467-57
v.	:	Grand Jury No. 378-57
Lloyd Davis	:	Vio. 26 U.S.C. 4704a 21 U.S.C. 174

The Grand Jury charges:

On or about March 12, 1957, within the District of Columbia, Lloyd Davis purchased, sold, dispensed and distributed, not in the original stamped package and not from the original stamped package, a narcotic drug, that is, four capsules containing a mixture totaling about 4.5 grains of heroin hydrochloride, quinine hydrochloride and milk sugar.

SECOND COUNT:

On or about March 12, 1957, within the District of Columbia, Lloyd Davis facilitated the concealment and sale of a narcotic drug, that is, four capsules containing a mixture totaling about 4.5 grains of heroin hydrochloride, quinine hydrochloride and milk sugar, after the said heroin hydrochloride had been imported, with the knowledge of Lloyd Davis, into the United States contrary to law. This is the same heroin hydrochloride which is mentioned in the first count of this indictment.

/s/ Oliver Gasch
Attorney of the United States
in and for the District of
Columbia

A TRUE BILL:

/s/ (Illegible)
Foreman.

3 [Filed September 3, 1957]

MOTION TO RECONSIDER MOTION TO SUPPRESS

Comes now the Defendant, Lloyd Davis, by and through his Attorney, J. Leon Williams, and respectfully moves this Honorable Court to:

1. Suppress the evidence illegally seized from his person on or about March 12, 1957.

For cause therefore, Defendant states these grounds:

1. The arrest, search, and seizure of the Defendant was unlawful, and without probable cause.

2. The subsequent search, and seizure of certain property in the defendants possession was in violation of the Defendants rights under the Constitution, and was exploratory and unauthorized.

3. For such other reasons as will be urged upon the Court at the oral hearing of this Motion.

/s/ J. Leon Williams
Attorney for Defendant

[Certification]
[Filed September 16, 1957]

Denied: John J. Sirica (signed) 9/16/57

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4 [Filed August 22, 1957]

On this 22d day of August, 1957, came the Attorney of the United States, the defendant in proper person and by his attorney, J. Leon Williams, Esquire; whereupon consideration of the defendant's motion to suppress evidence, said motion is by the Court denied.

The defendant is remanded to the District Jail.

By direction of
John J. Sirica
Presiding Judge
Criminal Court #One

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11 [Filed October 9, 1957]

On this 9th day of October, 1957, came the attorney of the United States; the defendant in proper person and by his attorney J. Leon Williams, Esquire; whereupon the jurors of the regular Petit Jury panel serving in Criminal Court No. 3, being called, are sworn upon their voir dire; and thereupon comes a jury of good and lawful persons of the District of Columbia, to-wit:

1. Lucille Morman
2. Edward J. Garner
3. Louella J. Natale
4. Albert F. McGann
5. Cornelius T. Martin
6. Bethea O. MacNab
7. Naomi R. Hardy
8. James W. Geater
9. Clara A. Downs
10. Frances D. Curtin
11. Ruth F. Cummins
12. James L. Ewin

who are sworn to well and truly try the issue joined herein; whereupon the jury upon their oath find the defendant guilty as indicted.

The case is referred to the Probation Officer of the Court and the defendant is remanded to the District of Columbia Jail.

The jury is polled.

By direction of

Edward A. Tamm
Presiding Judge
Criminal Court #3

---

12 [Filed November 8, 1957]

JUDGMENT AND COMMITMENT

On this 1st day of November, 1957 came the attorney for the government and the defendant appeared in person and by counsel, J. Leon Williams, Esqure.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of Violation of Title 26 Section 4704a United States Code, Violation of Title 21 Section 174 United States Code, as charged in the indictment, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary

being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Ten (10) years on each of counts One, and two said sentence by the counts to run concurrently with each other.

IT IS ORDREDD that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Edward A. Tamm
United States District Judge

---

13 [Filed November 13, 1957]

NOTICE OF APPEAL

Name and address of appellant: Lloyd Davis
2221-12th Place, N. W.
Washington, D. C.

Name and address of appellant's attorney: None

Offense: Vio. 26 U.S.C. 4704a, 21 U.S.C. 174

Concise statement of judgment or order, giving date, and any sentence: November 1, 1957. 10 yrs.

Name of institution where now confined, if not on bail:

D. C. Jail 200 19th St., S. E., Washington, D. C.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the above-stated judgment.

Date: November 4, 1957

/s/ Lloyd Davis
Appellant

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS
[Filed January 15, 1958]

18 UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

- -

UNITED STATES OF AMERICA :
vs. : Criminal Action No. 467-57
LLOYD DAVIS, :
Defendant :

- -

Washington, D. C.
October 9, 1957

The above-entitled matter came on for trial before the HONORABLE EDWARD A. TAMM and a jury.

APPEARANCES:

On behalf of the government:

ARTHUR J. McLAUGHLIN, Esq.,
Assistant United States District Attorney.

On behalf of the defendant:

J. LEON WILLIAMS, Esq.

* * * * *

26 (Jury panel was duly sworn.)

MR. McLAUGHLIN: May we approach the Bench?

THE COURT: You may.

(At the Bench:)

MR. McLAUGHLIN: Your Honor, there has been a motion filed to suppress, and argued before Judge Sirica, and it was denied.

The probable cause for the arrest was that the police officers had known this defendant some time before this occasion and known him to be a drug peddler and a drug addict and known also that a drug addict is not supposed to have a driver's permit. So they stopped him to question him about the driver's permit, and he ran, and they followed him and that is where the narcotics came in.

As an act of precaution I just told that police officer to start off his testimony that he had reasons to stop this man to ask him about his

driver's permit. I don't want to risk going into his previous knowledge about this man being an addict or peddler.

27 THE COURT: Very well.

MR. McLAUGHLIN: Is that all right with you?

MR. WILLIAMS: Yes, sir.

MR. McLAUGHLIN: Do you want me to start off?

MR. WILLIAMS: No, I don't believe so.

THE COURT: I believe it would be well if you could avoid any reference to his prior knowledge.

* * * * *

28 MR. WILLIAMS: Now, Your Honor, I would like to say this, that I will renew my motion in this case. I might say this, that after this motion was argued before Judge Sirica, I did file what might be in your jacket a motion to reconsider, and at that time I did quite exhaustively research the points and I filed points and authorities.

THE COURT: I saw it. It is very well written.

MR. WILLIAMS: I do want to call that to Your Honor's attention.

THE COURT: I noticed that Judge Sirica denied your motion to reconsider on September 16, 1957.

MR. WILLIAMS: Yes, he did, Your Honor, and it was done in a more or less -- that was not an oral hearing. It was just on the memorandum alone.

THE COURT: Very well. You may renew your motion at any time you want.

* * * * *

31 VIRGIL HOOD

was called as a witness for and on behalf of the government * * * *

DIRECT EXAMINATION

BY MR. McLAUGHLIN:

* * * * *

Q. You are a member of the Metropolitan Police Department?

A. Right.

Q. You were a member of the Metropolitan Police Department on March 12, 1957, is that right? A. I was.

Q. Now, what was your work on March 12, 1957, as a member of the Metropolitan Police Department? A. I was assigned to the Narcotic Squad.

Q. And on that particular day how were you patrolling or how were you working? A. I was cruising the street.

32 Q. Who was with you? A. Officer J. W. Somerville and John W. Hawkins, both of the Narcotic Squad.

Q. Approximately 2:00 p.m., that afternoon, in what part of the city were you? A. In the Northwest section.

Q. And did something happen when you were in the 700 block of Farragut Street? A. Yes, sir.

Q. Did there come a time you saw the defendant Davis? A. Yes.

Q. Under what circumstances did you see him? A. I was driving south on Illinios Avenue and Lloyd Davis, the defendant, was driving north on Illinois Avenue.

At Illinois Avenue and Farragut Street I observed Davis and Davis made a right turn on Farragut Street. I made a left turn and followed him.

I pulled beside Davis and Davis pulled to the curb, as he saw me, and jumped out of his car and began to run.

Q. Why were you stopping Davis? A. I stopped Davis to see his driver's permit.

Q. When Davis, you say, jumped out of his car; is that right?

33 A. Yes, sir, he did.

Q. What did he do, where did he go? A. He jumped out of his car and started running through an alley in the 700 block of Farragut.

Officers Somerville, Hawkins, and I pursued him through the alley.

Q. Was he apprehended in the alley? A. Yes, he was.

Q. Where in the alley was he apprehended? A. I'd say about 50 feet from the street, from Farragut Street, running south.

Q. Now, as he ran up that alley, did you see him do anything? A. He threw something to the ground.

Q. Can you tell us in what sequence were you, who was first among the officers? A. Officer Hawkins was first.

Q. And who was second? A. Officer Somerville.

Q. And you were last? A.I was last, I was driving the automobile.

Q. Do you see Lloyd Davis in court here today? A. Yes.

Q. Will you point him out? A. The defendant in the grey suit sitting at the table.

34 * * * * *

Q. I show you Government's Exhibits marked for identification 1 and 2, and ask you if you can identify those. A. I identify this as capsules taken, the envelope that contained the capsules taken from Davis, by my initials and the date.

Q. Who turned it over to you? (No answer.)

Q. Showing you Government's Exhibit 1, I ask you if you can identify that. A. These are the three capsules that Officer Hawkins turned over to me.

Q. All right, showing you Government's Exhibit marked for identification No. 2, I ask if you can identify that. A. I identify this envelope by my initials. It was the envelope that contained the capsule that was found in the alley.

Q. Who turned it over to you? A. Officer Somerville.

Q. I show you Government Exhibit marked for identification No. 3 and ask you what did you do, if anything, with Government Exhibits 1 and 2, with reference to Government's Exhibit 3? A. They were put in

35 this larger envelope and sealed by me, identified by my writing on the envelope.

Q. I ask you, as you put Government's Exhibit 1 and 2 into Government's Exhibit 3, what did you do with Government's Exhibit 3? A. Government Exhibit 3 was turned over to Officer Somerville, who carried it to the chemist.

Q. Is there any difference in Government Exhibit 3 today than when you turned it over to the chemist? A. Yes.

Q. What is that? A. The seal has been broken. The envelope was opened.

Q. Was it sealed when you turned it over? A. Yes, it was.

Q. In the 700 block of Farragut that you have reference to, is that in the District of Columbia? A. Yes, it is.

* * * * *

CROSS-EXAMINATION

BY MR. WILLIAMS:

* * * * *

36 Q. Now, prior to March 12, 1957, when you passed this defendant on Illinois Avenue, can you tell us when was the most recent time that you had seen him? A. I don't remember when the last time I had seen him before that time was, sir.

Q. Had it been as much as a year, or as long as a year? A. No, I don't think it had been a year.

Q. Would you say it had been as long as nine months? A. I don't recall, sir.

Q. Would you say it had been a period of several months since you had seen him last? A. Several months or more, sir. I don't recall exactly what time it was.

Q. Now, at the time you decided to turn and follow this defendant, Officer, was he speeding? A. No, he wasn't, sir.

Q. Did you notice any traffic violation on his part? A. No, I didn't.

37 Q. Did he do anything to attract your attention other than to drive by? I mean in the operation of his vehicle. A. No, he didn't do anything out of the ordinary.

Q. Now, there came a time when you pulled abreast of this defendant, did it not? A. Yes, there did.

Q. What did you say to him? A. I didn't get a chance to say anything to him. He got out and ran.

Q. Did you or either of the officers in the automobile which you were operating tell him to park his car or pull to the curb or do anything? A. When I observed him he was operating his car. He made a turn and I turned behind him and he looked in the car and saw me and pulled to the curb. He didn't park his car correctly. He just pulled to the curb, jumped out and ran.

Q. Did you ascertain that he lived where the car was parked or in that block? A. Did I?

Q. Yes. A. Repeat that, please.

Q. Did you ascertain that he did live in the 700 block of Farragut
38 Street? A. No, he didn't live there.

Q. Well, did you ascertain that he had relatives living there in that block? A. I didn't question that, but I knew his address.

* * * * *

Q. Now, Officer, when you decided to -- when you passed the defendant and you saw him, was it at that time that you decided to stop him? A. I never passed him, sir.

Q. Do I understand you to say you didn't pass him on Illinois Avenue? A. No, I didn't pass him. I said that I was travelling south and he was travelling north. He made a right turn and I made a left turn.

As a matter of fact, I was always behind, slightly behind the defendant.

Q. The car you were operating and the car he was operating never did come abreast of each other? A. They did come abreast, sir.

Q. Where was that? A. In the 700 block of Farragut Street.

Q. Did you stop your car at that time? A. I did stop my car.
39 Q. Was it directly opposite his automobile at that time? A. It was right beside him when I stopped.

Q. Now, did you say anything to him at that time? A. I didn't get a chance to, sir.

Q. Were your cars facing opposite directions at that time? A. They were facing the same way, they were both facing east.

Q. What was the first thing you recall which you said to this defendant? A. First thing I said to him was "Halt."

Q. Was he still in the car then? A. No, he was running.

Q. Did either of the other officers say anything to him? A. Everybody was hollering for him to stop.

Q. Do you know what they wanted with him, why they wanted him to stop? A. Because I asked them to stop him.

Q. Why did you ask them to stop him? A. Because I wanted to see his driver's permit.

Q. Now, at that time that you say you wanted to see his driver's permit, Officer, did you in fact know whether he had one or not? A. I
40 didn't believe he had a driver's permit, sir, that is why I stopped him.

* * * * *

Q. Now, on an occasion when you had seen him previous to March 12, did you have an occasion to have any conversation with him? A. No, I didn't, sir.

Q. Could you have had a conversation with him if you had wanted to? A. If I had wanted to I probably could have, sir.

Q. Do you know whether he had -- or did you ascertain whether or not he had a driver's permit at that time or were you concerned whether he had an operator's permit at that time? A. I don't know the exact time or date that I last saw Davis, but I do remember where it was. He was standing near 11th and Q Street, Northwest. And he was standing--

Q. Then it is your testimony the reason why you stopped him, Officer, was that you wanted to see if he had an operator's permit?

* * * * *

41 REDIRECT EXAMINATION

BY MR. McLAUGHLIN:

Q. Did he have an operator's permit on that day? A. No, he didn't.

* * * * *

JOSEPH W. SOMERVILLE

was called as a witness for and on behalf of the government * * * *

DIRECT EXAMINATION

BY MR. McLAUGHLIN:

* * * * *

Q. You are a member of the Metropolitan Police Department? A. I am.

Q. Assigned to what squad? A. Narcotics Squad.

Q. On March 12, 1957, were you a member? A. I was.

Q. Assigned to the Natcotic Squad? A. I was.

42 Q. On that day were you in the company of Officers Hood and Hawkins? A. I was.

* * * * *

Q. Under what circumstances did you see Mr. Davis? A. Officer Hood, Hawkins and myself were driving east on Farragut Street and observed the defendant Davis operating a 1954 Cadillac. And through conversation with Officer Hood it was ascertained that he believed the defendant --

Q. You turned around and followed the defendant, did you? A. Yes.

Q. Where did you stop? A. 700 block of Farragut Street.

Q. Tell us under what circumstances you stopped. A. It was

43 ascertained he did not have a D. C. permit.

* * * * *

44 Q. What did he do if anything? A. Davis made a gesture toward his pocket and his hand came away and I observed a capsule of white powder fall on the ground.

Q. What did you do when you saw that? A. I recovered the capsule of white powder.

* * * * *

Q. All right. And do you know how it got in that alley? A. It was thrown there by defendant Davis.

* * * * *

45 CROSS-EXAMINATION

BY MR. WILLIAMS:

* * * * *

46 Q. But you do recall that somebody directed him to stop?

A. Yes.

* * * * *

47 Q. All right. Now, when one of the officers, you say, in the automobile in which you were riding, told him to stop, what did he do?

A. He pulled over to the curb.

Q. He pulled over to the curb? A. Yes.

Q. And stopped? A. Yes.

* * * * *

48 Q. Now, when you got out of the car, what was the first thing you did? A. When I got out of the car I started toward the car occupied by Lloyd Davis.

Q. You started over to the automobile? A. Yes, I did.

Q. Now, tell me, did you notice how he operated that automobile?

A. He was behind the wheel.

Q. Was he operating it in a normal manner? A. He was.

Q. Did he violate any traffic regulations which you noticed?

A. Not that I could see.

Q. Now, when you got out of the car, and you started toward him, what were you going to do to him? A. I was going to talk to him.

Q. You were going to talk to him? A. Yes.

Q. What were you going to talk to him about? A. Ask him for his D. C. permit, his driver's permit.

Q. This is the first time you had ever seen him, wasn't it?

A. That's correct.

* * * * *

51 Q. Now, Officer Somerville, at that time you were about 25 feet away from him or about as far as I am from you now? A. That's correct, approximately.

Q. Yes. Now, did you stop at that time and pick up whatever was thrown? A. I stopped where I observed him slinging his hands down, I stopped at that place.

Q. You didn't chase him any further? A. No, I didn't.

* * * * *

52 Q. Did you notice the general condition of the alley there at that time? A. I would say I did.

Q. You did notice it. Did you see any trash or debris around in the alley? A. This alley was rather clean.

Q. Very clean alley. A. Yes, sir.

* * * * *

53 JOHN W. HAWKINS

was called as a witness for and on behalf of the government * * * *

DIRECT EXAMINATION

BY MR. McLAUGHLIN:

* * * * *

Q. You are a member of the Metropolitan Police Department? A. That's correct.

* * * * *

Q. I call your attention to March 12, 1957. Were you in the

54 vicinity of the 700 block of Farragut Street, Northwest in the District of Columbia? A. I was.

* * * * *

Q. Who were you there with? A. Officer Somerville and Officer Hood.

* * * * *

Q. Will you tell us under what circumstances you saw the defendant Davis? A. When I first saw the defendant Davis he was in a blue Cadillac travelling north on Illinois Avenue and as we passed him in our private automobile he turned into the 700 block of Farragut Street, and we followed him. And when we pulled up alongside of Davis' automobile, he immediately pulled to the curb and jumped out of the car and started to run.

Q. Where did he run to? A. He ran to an alley which is located in the 700 block of Farragut Street.

Q. What did you do when you saw Davis run from his car? A. I
55 got out of the car and chased after him.

Q. Did there come a time when you arrested him? A. Yes, sir.

Q. When and where did you arrest the defendant? A. Arrested him in the alley in the 700 block of Farragut Street.

Q. After his arrest, where did you bring him? A. He was brought to the office of the Narcotics Squad.

* * * * *

Q. Can you identify Government Exhibit marked for identification No. 1 as what? A. As the three gelatin capsules containing a white powder.

Q. Had they been in your possession? A. These capsules were taken from the defendant's pocket.

Q. Taken from the defendant when and where and by whom?
56 A. It was taken from the defendant's pocket immediately upon arriving at the office of the Narcotics Squad. I removed these three gelatin capsules with white powder from his inside coat pocket. There was a preliminary field test performed on one of these capsules. It was placed into this cream-colored envelope, at which time I initialled it and a date was put on same.

* * * * *

CROSS-EXAMINATION

BY MR. WILLIAMS:

Q. Officer, when you first saw the defendant Davis in his automobile, where were you riding in the automobile in which you were riding? A. I was travelling south on Illinois Avenue.

Q. All right. Were you in the front seat or back seat? A. As I recall, I was in the front seat.

Q. Where was Officer Somerville? A. As I recall, Officer Hood
57 was driving, Officer Somerville was in the rear, and I was in the front with Hood.

* * * * *

Q. Now, Officer, if you can recall, before you got out of your car and after the defendant Davis had turned his automobile into Farragut Street, did you say anything to him? A. No, sir.

58 Q. Did anybody in the car say anything to him? A. No, sir.

Q. Do you recall whether anybody said, "Stop," or "Curb your car," or "Halt," or "I want to talk to you," or anything? A. Before we turned into Farragut Street?

Q. Well, after you turned into Farragut Street. A. No, sir.

Q. Before you stopped your car? A. No, sir.

Q. Or your car was stopped. A. No, sir.

Q. Now, when Mr. Davis got out of his car did anybody say anything to him? A. No, sir.

Q. As nearly as you can remember, Officer, when was the first time any of the officers in your company said anything to Mr. Davis? A. It was when I caught Davis in the alley, 700 block of Farragut Street.

Q. And what did you say to him at that time? A. I caught him and placed him under arrest.

Q. Now, you placed him under arrest the moment you caught him? A. That is correct.

59 Q. Do you remember the words you used?

* * * * *

THE WITNESS: I don't exactly recall the exact words, but it was words to the effect that he was under arrest.

Q. Now, tell me this, Officer, why did you arrest him at that time? A. I arrested him because --

MR. McLAUGHLIN: Your Honor, may we approach the bench?

THE COURT: You may.

(At the Bench:)

THE COURT: You understand the risk you are taking in asking this question, Mr. Williams? I think Mr. McLaughlin is trying to save you from an answer that may embarass your defendant. You asked him why he arrested him. I assume you will get a shotgun answer.

MR. WILLIAMS: Well, I was thinking the answer would be within the confines of what we have here in this case.

THE COURT: I don't know why they made an arrest. If you ask him why they made an arrest he will probably tell you.

MR. WILLIAMS: I will reframe it.

MR. McLAUGHLIN: I think I am entitled to go into it.

60 * * * * *

BY MR. WILLIAMS:

Q. Now, Officer, in your observation of Mr. Davis from the time you first saw him on Illinois Avenue and up until the time he got out of the car on Farragut Street, had you seen him do anything, that is, in the operation of his car, that was a violation of the law? A. As far as operating the car?

Q. Yes, yes. A. Yes, sir.

Q. What did he do? A. He was operating without --

THE COURT: Just a minute. You have to say what you saw him do. What did you see?

THE WITNESS: I didn't see him do anything.

BY MR. WILLIAMS:

Q. Now, when was the first time you knew, after you had arrested him there in the alley, that you found out that he didn't have an operator's permit? A. Would you mind repeating that?

Q. When was the first time you knew for a fact, after you had arrested him there in the alley, that Mr. Davis did not have an operator's permit? A. For a fact?

61 Q. Yes, sir. A. It was when I asked him for his operator's permit.

Q. And this was after you had grabbed him in the alley, wasn't it? A. Yes, sir.

* * * * *

Q. Now, I ask you, Officer, did you see him throw away anything? A. Yes, sir.

* * * * *

62 Q. Now, about how far away from him were you at that time? A. I'd say I was approximately 5 or 6 feet.

* * * * *

Q. Was that at the very beginning of the chase down the alley? A. Was what at the beginning?

Q. When you saw him throw something away? A. No, sir. That was near the end of the chase.

* * * * *

63 Q. Now, could you tell us, Officer, whether or not, where he had this thing you say you saw him throw away, where did he have it? A. In his hands.

* * * * *

Q. Could you show us how he threw it away? A. When he turned from Farragut Street into the alley, we were running at a very high rate of speed, when he turned into the valley he threw it down with his left hand.

Q. With his left hand? A. Yes, sir, and I passed by it and grabbed him and placed him under arrest.

Q. You say he threw it away more or less immediately when he got in the alley, shortly after he turned in the alley? A. Yes, sir.

Q. Now, did you see him stick his hands in his pockets during the chase? A. No, sir.

* * * * *

64 Q. Did you search Davis there in the alley? A. I went through his pockets generally.

Q. Inside pockets also? A. I might have, I don't recall exactly each pocket that I searched, but I went through his pockets generally.

Q. Do you recall searching his inside coat pocket? A. I don't exactly recall searching his inside coat pocket. I know I went in several pockets. I went in all the pockets that I saw.

Q. And it was at that time that you asked him for his operator's
65 permit? A. After I finished searching him.

Q. After you finished searching him, then you asked him for his operator's permit? A. Yes, sir.

Q. Now, tell me this, Officer, when Officer Somerville came up to you as you stood there and searched Davis, did you have a conversation with Officer Somerville? A. Not that I can recall.

Q. Now, directing your attention, Officer, to Government's Exhibit 3, I believe it is --

MR. McLAUGHLIN: 2.

MR. WILLIAMS: 2.

BY MR. WILLIAMS:

Q. Exhibit 1, which you identified there, which is before you. When did you secure those exhibits? A. Immediately upon arriving at the office of the Narcotics Squad.

Q. You found them yourself? A. Yes, sir.

Q. Had anybody else searched Mr. Davis beside yourself? A. I don't recall anyone else searching.

* * * * *

66 Q. When did you first know that Officer Somerville had found the capsule in the alley? A. After I had caught Davis, Somerville was behind me and Somerville picked the capsule up.

* * * * *

67 WILLIAM BUTLER

was called as a witness for and on behalf of the government * * * * *

DIRECT EXAMINATION

BY MR. McLAUGHLIN:

Q. Your full name is what? A. William P. Butler.

Q. You are employed where? A. Internal Revenue Service.

Q. In what capacity? A. As a chemist.

* * * * *

68 Q. What did you find in Government's Exhibit 1 and 2, if anything? A. Government's Exhibit No. 1 contained a cigarette -- cellophane paper, with three gelatine capsules.

Q. What did the capsules contain? A. Contained heroin hydrochloride, quinine hydrochloride and milk sugar, the heroin being a derivative of opium and a narcotic drug.

Q. What did Government Exhibit 2 contain? A. Government's Exhibit 2 contained one gelatin capsule, and that capsule contained heroin hydrochloride, quinine hydrochloride and milk sugar, heroin being a

derivative of opium and a narcotic drug.

69 * * * * *

MR. McLAUGHLIN: At this time, Your Honor, the Government will offer in evidence Government's Exhibits 1, 2 and 3.

MR. WILLIAMS: I would object to their admission for the reasons stated in my motion.

THE COURT: The Court will overrule the objection. The exhibits will be admitted.

* * * * *

70 MR. McLAUGHLIN: No, the Government rests.

THE COURT: Will counsel come to the Bench.

(At the Bench:)

THE COURT: I wanted to afford you any opportunity to make any statement on the record as to the basis for your objection to admission of the evidence.

MR. WILLIAMS: If Your Honor please, my objection to the admission of the evidence goes to the lack of probable cause as set forth in my motion to suppress.

I think that the testimony which Your Honor has heard and particularly that part of the testimony with regard to cause and why this defendant was in fact in the first instance stopped -- No, there is a conflict of the testimony with regards to whether or not this defendant was told to stop.

If we disregard that aspect, that he did stop of his own accord, then the question goes further as to what yet is the probable cause upon which he was arrested.

The officer testified that he grabbed him in the alley and placed him under arrest and then he ascertained that he didn't have an opera-

71 tor's permit. So I submit that he was arrested first. And what evidence the Government has secured subsequent to that arrest was illegally seized evidence and as such was inadmissible.

Now, the conflict further in the testimony is that -- I think it is an inescapable point that we must come to -- that for all intents and

purposes this defendant was arrested before anything else happened.

And if in fact the officers maintain the position that they had to ascertain that he had an operator's permit, there were other ways of finding out rather than arresting this defendant to find that out.

So with those reasons, as I mention to Your Honor, together with the other reasons, I renew my motion to suppress at this time.

THE COURT: What is your position, Mr. McLaughlin? What was shown on the motion to suppress heretofore?

MR. McLAUGHLIN: The government's theory is this: That Officer Hood had known this defendant before and known him as a convicted drug peddler and addict and knew, as a member of the Metropolitan Police Department, that a drug addict and peddler's driver's license is revoked.

So, knowint that and seeing him, I think he had a right to stop him.

The question as to the permit, when he stopped him the defendant
72 fled, which added to the theory of a misdemeanor being committed, in the eyes of the police officers.

THE COURT: For the interest of saving time, I have not gone back into the material that Judge Sirica heard because Mr. McLaughlin indicated the government's theory.

I believe the Court is required to deny your motion to suppress.

Are you going to have any testimony in this case?

MR. WILLIAMS: I don't think so, Your Honor. I think I am going to stand on my motion. I want to ask the defendant what his view is, but I don't think so.

* * * * *

THE COURT: Very well.

73 Do you want any special charge?

MR. McLAUGHLIN: No, Your Honor.

THE COURT: Mr. Williams?

MR. WILLIAMS: Well, I don't think of any special charge, Your Honor. Your ordinary charge would cover any point I think would be material.

THE COURT: I will give you an opportunity after the charge to ask for anything more that you think should be in the charge.

* * * * *

MR. WILLIAMS: This question, they have heard lots about it, probable cause. Will you give them an instruction?

THE COURT: I think this is a matter of law, Mr. Williams. I
74 don't think that is a question of fact that relates to the guilt or innocence of the defendant. I think it is purely a question of law. If anyone is in error on that it will be the Court and not the jury.

MR. WILLIAMS: I might say this to Your Honor, quite frankly, I had really not intended to have a jury trial and I got so crossed up and confused this morning that it slipped my mind, because I realize it is a question of law here and one I would be perfectly willing to have Your Honor decide.

THE COURT: I don't think that we have gone this far now we can waive a jury trial, so we will dispose of it this way.

MR. WILLIAMS: Very well, Your Honor.

MR. MCLAUGHLIN: Wait a minute. Are you going to argue about probable cause? Because if you do, I will reopen my case and put in the probable cause, showing the knowledge they had of this defendant.

THE COURT: I would feel compelled, if you talk about probable cause in the argument, to point out that the matter of the legality of the defendant's arrest is a matter of law for the Court and not a question of fact for the jury.

(In open court:)

THE COURT: Mr. Williams.

MR. WILLIAMS: Just a moment, Your Honor.

75 (Counsel conferred with the defendant.)

MR. WILLIAMS: The defense does not want to put on any witnesses.

THE COURT: You have no witnesses?

MR. WILLIAMS: No, Your Honor.

THE COURT: You may proceed with your closing argument.

* * * * *

83 CHARGE OF THE COURT

THE COURT: Ladies and gentlemen of the jury, I again caution you that you do not consider arguments of counsel as evidence in the case because the evidence is testimony you have heard from the lips of the witnesses plus the three exhibits which the Court has admitted into evidence.

As you all know by this time, you will, when you go into the jury room, take with you a copy of the indictment.

I have told you repeatedly and I tell you again, the indictment is not evidence against this defendant. It is not entitled to any probative value in your deliberations. The sole purpose of the indictment is to inform the defendant of the charges which have been preferred against him.

The indictment in this case is in two counts. It is drawn in rather
84 technical language. Why? Because fundamentally the federal government has no police power to make laws relating to narcotics. It is a shock to some people at times to learn that the federal government has no authority to just say the derivatives of opium are illegal and no one can possess them. The federal government does not have that power.

The federal government, as we all know and often complain about, has the power to tax. Consequently, the Congress of the United States has drawn a number of taxing measures relating to opium and the products of opium, the various narcotics.

The federal narcotics laws are then tax laws, written in such a way that they provide a means and a manner wherein taxes will be collected from any person dealing in narcotics.

Briefly, the statutes which I am going to read to you in detail in a moment or two provide that no person shall be authorized to deal in narcotics without having a permit issued to him by the Treasury of the United States. They further provide that narcotics can never be sold, dispensed or otherwise trafficked in unless they are sold or dispensed or produced from a package which contains an Internal Revenue stamp.

That is why Mr. McLaughlin, in his questioning of these govern-
85 ment witnesses, was very careful to ask were there any government

stamps on the capsule, were there any government stamps on the three capsules that the witnesses say were taken at Police Headquarters, et cetera.

The narcotics laws are revenue statutes, and that is why the phraseology is somewhat technical.

To proceed now to this indictment.

The first count charges that "on or about March 12, 1957, within the District of Columbia, Lloyd Davis purchased, sold, dispensed and distributed, not in the original stamped package and not from the original stamped package, a narcotic drug, that is, four capsules containing a mixture totalling about 4.5 grains of heroin hydrochloride, quinine hydrochloride and milk sugar."

In other words, the essence of the first count of the indictment is that the defendant purchased, sold dispensed or distributed four capsules of heroin hydrochloride not in and not from the original stamped package.

The second count of the indictment which relates to the same transaction charges, "on or about March 12, 1957, within the District of Columbia, Lloyd Davis facilitated the concealment and sale of a narcotic drug, that is, four capsules containing a mixture totalling about 4.5 grains of heroin hydrochloride, quinine hydrochloride and milk sugar, after the said heroin hydrochloride had been imported, with the knowledge of Lloyd
86 Davis, into the United States contrary to law."

So the essence of the second count is that the defendant facilitated the concealment of a narcotic drug which had been imported into the United States contrary to law.

The first count of the indictment is an offense against the laws of the United States because the United States Code has a provision which says "It shall be unlawful for any person to purchase, sell, dispense or distribute narcotic drugs except in the original stamped package or from the original stamped package. In the absence of appropriate tax-paid stamps, the narcotic drugs shall be prima facie evidence of a violation of this subsection by the person in whose possession the same may be found."

The second count of the indictment is drawn under a section of the United States Code which says that "whoever fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction contrary to law, or receives, conceals, buys, sells or in any manner facilitates the transportation, the concealment or the sale of any such narcotic drug after it has been imported or brought into the United States, knowing the same to have been imported or brought into the United States contrary to law, violates this
87 section of the criminal code."

This section provides for "whenever on trial for a violation of this subsection, the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury."

One other question which may arise in your mind is why there are two counts in this indictment pertaining to one group of capsules.

It is well accepted law in this jurisdiction that when an act of a person violates two different laws, he may be prosecuted for violation of each of those laws.

In other words, if I can make some kind of a comparison, a person who, let us say, steals an automobile might be prosecuted in one count of an indictment for theft of an automobile under a statute relating to theft of automobile, and might be prosecuted under another section of the statute for grand larceny.

There are two laws which have been violated in this transaction if you believe the government's witnesses, and the government has the right to prosecute for each violation of the law.

You must, of course, return a separate verdict on each count of the indictment.

88 As you know, the defendant is presumed to be innocent. This means, as I have told you before, that the defendant has no requirement that he prove his innocence but that rather the burden is upon the government to prove the defendant's guilt and to prove it beyond a reasonable doubt.

This in turn means that unless the government proves that this defendant committed each and every element of the two offenses with which he is charged you, the jury, must find the defendant not guilty.

As I have told you on six or seven occasions in the past week, a reasonable doubt is a doubt which is predicated on reason, a doubt for which you can give a reason to yourself.

You must consider the testimony of all of the witnesses who have appeared before you. You must evaluate the credibility of these witnesses. In other words, you must determine which of the witnesses you are going to believe and to what extent you are going to believe them.

As I have told you before, you have the right to consider the demeanor of the witness on the witness stand, his manner of testifying; in this particular case, whether the witness impresses you as favoring the government or favoring the defendant or being prejudiced against the government or the defendant.

89 In addition, of course, you have the right to consider any factor that appears important to you in reaching your determination as to whether these witnesses have told you the truth or have told you a falsehood.

You know, of course, that if you find that any witness wilfully testified falesly as to a material fact concerning which the witness could not possibly be mistaken you are then at liberty to disregard the entire testimony of that witness or any part of the testimony of that witness.

In this case, the defendant has not taken the witness stand. In our criminal procedure we say figuratively to defendants, "You may or may not take the witness stand, as you see fit." But the law wisely says that no inference of guilt arises against a defendant because of his failure to testify as a witness in his own behalf.

You must remember, then, that there is no inference of guilt attached to the fact that this defendant did not testify as a witness in this case.

There is another aspect of the case to which I must make some reference. That is the testimony of the first three government witnesses that the defendant, when he alighted from his car, attempted to flee.

As I have explained to a number of you in an earlier charge, you may consider this evidence of flight as being an indication of guilt if you

find that certain circumstances existed.

90 As a matter of law, of course, in this type of situation "flight" means not merely a leaving or leaving the situs of a crime, but means a leaving or concealment under a consciousness of guilt for the purpose of evading arrest.

Therefore, if you find that the defendant's conduct was induced by fear of arrest, then it was a flight from justice and you may consider it as a circumstance indicating guilt.

You are the sole, the exclusive judges of the facts in this case. You must consider the matters deliberately and carefully in the light of the instructions which I have given to you.

Your verdict must be a unanimous one.

On the first count of the indictment your verdict may be either guilty or not guilty.

On the second count of the indictment your verdict may be either guilty or not guilty.

* * * * *

(At the Bench:)

* * * * *

91 THE COURT: Mr. Williams, do you request any further charge?

MR. WILLIAMS: No, sir.

THE COURT: Do you have any objection to the charge as given?

MR. WILLIAMS: No, sir.

THE COURT: Very well.

* * * * *

VERDICT OF THE JURY

THE DEPUTY CLERK: Mr. Foreman, has the jury agreed upon its verdict?

JURY FOREMAN: It has, sir.

THE DEPUTY CLERK: What say you as to the defendant Lloyd Davis on count 1?

JURY FOREMAN: Guilty, sir.

THE DEPUTY CLERK: What say you as to the defendant Lloyd

92 Davis on Count 2?

JURY FOREMAN: Guilty, sir.

* * * * *

CHAMBERS OF JUDGE BAZELON

No. 14,230

BRIEF FOR APPELLANT

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

LLOYD DAVIS,
Appellant,
v.
UNITED STATES OF AMERICA,
Appellee.

United States Court of Appeals
For the
District of Columbia Circuit
FILED MAR 21 1958
Joseph W. Stewart
CLERK

On Appeal From Judgment of the United States District Court for the District of Columbia

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No. 14,230

QUESTION PRESENTED

Where the defendant is arrested upon suspicion of the commission of a misdemeanor, and after his arrest a search of his person discloses evidence of the commission of a felony, for which latter offense he is indicted and convicted, does the rule that an arrest without a warrant and subsequent search of the person is justified when the "facts and circumstances within the arresting officers' knowledge and of which they had reasonable trustworthy information sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed" apply to the facts and circumstances surrounding the:

(a) commission of the misdemeanor, or

(b) commission of the felony, or

(c) commission of both.

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UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

LLOYD DAVIS,		
Appellant,		
v.		No. 14,230
UNITED STATES OF AMERICA,		
Appellee.		

On Appeal from Judgment of the United States District Court for the District of Columbia

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BRIEF FOR APPELLANT

Jurisdictional Statement

Appellant was indicted in the District of Columbia on two counts of narcotic violations under 26 U. S. C., sec. 4704 (a), and 21 U. S. C., sec. 174, respectively (JA 1). He moved, before trial, to suppress (JA 2) and at the trial made timely objection to the admission in evidence of the property taken from his person (JA 20), on the grounds that the evidence had been obtained by illegal search and seizure. The motion and objection were severally overruled (JA 2, 20 and 21). Trial by jury resulted in a verdict of guilty (JA 27). Appellant was sentenced to a term of ten years (JA 3). He appeals from the final judgment and commitment (JA 4).

Statement of Facts

At about two o'clock, p. m. of March 12, 1957, three police officers, assigned to the narcotic squad, were proceeding in a private automobile (JA 14) south, and defendant Davis was proceeding in an automobile north on Illinois Avenue, in the District of Columbia (JA 7). At its intersection with Farragut Street, the officers observed Davis turning right. They

followed him (JA 7). Davis was doing nothing out of the ordinary, nor was there evidence of traffic violations (JA 9, 13). The officers proposed to ascertain whether Davis had an automobile operator's permit (JA 7, 11, 13 and 17). In 1952 or 1953, Davis was known as a convicted narcotics user and peddler (Tr 104, 105 and 120) and supposing that such one is not permitted to operate an automobile they proposed to ascertain the fact (Tr 105, 106). Whether Davis had since continued the practice of indulging in narcotics, the officers were without personal knowledge (Tr 110). On this day the officers had knowledge in the narcotics squad that Davis was back on the street using narcotics (Tr 111, 114).

As the officers' car drew alongside the Davis car, which had stopped at the curb (JA 10), Davis leaped out of the car and ran into an alley (JA 7, 9). The officers gave chase. They shouted to him to halt and to stop (JA 11). As Davis ran along the alley, he was observed to throw something to the ground (JA 8, 12). The object was recovered by an officer. It proved to be a capsule containing a narcotic (JA 8, 12). He was placed under arrest (JA 7). The officers had no warrant of arrest (Tr 10). They found, after the arrest, that Davis had no permit to operate an automobile (JA 11, 13). He was taken to the office of the narcotics squad and searched (JA 13). Three capsules, containing narcotics (JA 14), were found upon his person (JA 15). Davis was indicted for narcotics violations (JA 1). He moved to suppress the evidence taken from his person. The motion was denied (JA 2). In overruling the motion, the Court held that a misdemeanor was committed in the presence of the arresting officer and that the arrest, as well as the search, were legal (TR 129, 130). At the trial he objected to the introduction, as evidence, of the property taken from him. The objection was overruled (JA 20, 21). There was a verdict of guilty (JA 3) upon which judgment was duly entered (JA

(JA 3).

Statement of Points

1. The arrest was without probable cause. Therefore, the arrest and subsequent search were unlawful.

2. The arrest was without warrant, and was not grounded upon a misdemeanor committed in the presence of the arresting officers; not in the presence of their senses.

3. For the purpose of constitutional safeguards, the important element is the act which set in motion the events leading to the arrest; not what followed the arrest.

4. The facts and circumstances which are to support the arrest and search are those surrounding the commission of a misdemeanor; not the offense charged.

Summary of Argument

The arrest was without probable cause. It follows that the search and seizure of the property found on the person of the defendant was unlawful. The legality of the arrest must be considered in the light of the officers' initial acts. From what they knew the moment they first saw Davis, it cannot be said that a misdemeanor was committed in their presence. To say otherwise is to weaken the rule and permit subsequent disclosure to justify the act. This lets down the bars protecting innocent persons travelling along the highway. The facts and circumstances which are to justify the acts of the officers are those related to operating an automobile without a license, not those related to the offense of possessing narcotics.

Argument

Appellant contends that the arrest was without probable cause and that the court erred in overruling his motion to suppress and admitting, over his objection, the property taken from his person. The applicable rule is stated in Mills v. United States, 90 App DC 365, 366; 196 Fed 2d 600, 601:

> "Were the facts and circumstances within the arresting officers knowledge and of which they had reasonably trustworthy information sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed."

See also Dalkruhl v. United States, 91 US App DC 125, 199 Fed 2d 175. The events which led to Davis' arrest were set in motion by the officers. Nothing that Davis did warranted the officers in following him. Unlike the Dalkruhl and Mills cases, there is absent here such events as suspicious actions, surveillance by the officers, the gathering of crowds, the passing of slips of paper and money (both cases involved numbers violations) all consistent with a numbers transaction. In the circumstances of this case, the government "is obliged to justify the arrest by the search and at the same time justify the search by the arrest" a practice condemned by Mr. Justice Jackson in Johnson v. United States, 333 US 10, 16; 92 L ed 437, 442.

Davis is not charged with a violation of the traffic regulations. When first observed, Davis was proceeding along the highway, in an ordinary manner, without any apparent traffic violation. So does every citizen for whom the constitutional safeguards were designed. To say that Davis was committing a misdemeanor in the presence of the officers because it was subsequently disclosed that he was without an automobile operator's permit, is to permit an unlawful invasion of a man's rights and justify it by subsequent events. The misdemeanor of operating without a permit must be in the presence of the officers' senses. There is no showing that at the time he was first observed, the officers knew that he had not been restored to his rights to operate an automobile. Davis was in no different situation than one who had been convicted of crime and had served his sentence, been pardoned or otherwise restored to his rights.

The importance of this case extends beyond Davis' predicament. It is not what has been done under the rule or law but

what might be done.

Conclusion

The District Court erred in overruling appellant's motion to suppress and in admitting, over his objection, the evidence taken from his person and its judgment should be reversed.

Respectfully submitted,

/s/ Jacob N. Halper

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45 69-10-34

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14230

307

LLOYD DAVIS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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United States Court of Appeals
For the
District of Columbia Circuit

FILED APR 28 1958

Joseph W. Stewart
CLERK

No. 14230

QUESTIONS PRESENTED

In the opinion of appellee the following questions are presented:

1. Where the driver of an automobile is known to the police to be a convicted narcotic drug peddler and user, and it is further known that such persons are deprived of permits to drive motor vehicles, may the police approach that person and inquire as to whether or not he has a driving permit?

2. If such person then flees on being approached, may the police give chase and apprehend him?

3. Is a capsule containing narcotics, which is abandoned by such person during the chase, *seized*, in terms of the Fourth Amendment to the Constitution, when recovered and examined by the police?

4. Is the subsequent search of the person apprehended, and the seizure of additional capsules containing narcotics from him, an unlawful search and seizure under the aforementioned circumstances?

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14230

LLOYD DAVIS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

On May 6, 1957, a two count indictment was filed in the District Court charging appellant with violations of 26 U. S. C. § 4704 (a) and 21 U. S. C. § 174 (narcotics) (Crim No. 467–57) (J. A. 1). Appellant, on May 10, 1957, entered a plea of not guilty (R. 2). Thereafter, on July 11, 1957, counsel filed a motion to suppress evidence (R. 15), which was heard and denied on August 22, 1957 (J. A. 2). A motion to reconsider the motion to suppress was filed on September 3, 1957 (J. A. 2), and subsequently denied, on September 16, 1957 (J. A. 2). A trial by jury commenced on October 9, 1957 (J. A. 5). Appellant was found guilty as indicted (J. A. 3). The Government, on October 14, 1957, filed an Information as to previous offenses (R. 16), and on November 1, 1957, appellant was sentenced to serve a term of imprisonment of ten years on each count, the sentences, by the counts, to run concurrently (J. A. 4). This appeal followed.

A. The motion to suppress

On August 22, 1957, a hearing was held in the District Court on appellant's motion to suppress (R. 99). Counsel for the defense called as a witness, officer Virgil J. Hood of the Metropolitan Police Department (R. 101). The officer testified, that on March 12, 1957, while cruising with two brother officers in the northwest section of the District of Columbia, he saw appellant driving an automobile on Illinois Avenue, near Farragut Street (R. 102). Prior to this date, Hood had come to know appellant as a convicted narcotic drug peddler and user (R. 104, 105). Hood, while working as an undercover man in the years 1952–1953, had made a narcotic purchase from appellant, had seen him *snort* heroin (R. 110), and apparently, was instrumental in bringing about appellant's earlier conviction on narcotic charges (R. 105, 16).

Hood, an officer with seven years experience in narcotic matters (R. 104), further testified that those convicted of narcotic offenses "are not supposed to have a permit to drive an automobile in the District of Columbia" (R. 106, 111), and on seeing appellant operating a car, he decided to stop him, and "find out if he had a driver's permit" (R. 105). If, in fact, appellant produced a permit, the officer intended to allow him to proceed (R. 115).

On pulling abreast of appellant's automobile, officer Hood saw appellant jump out the right hand side of the car, and run toward and into an alley (R. 103, 106). Hood and his two brother officers gave chase, one officer (Hawkins) apprehending appellant (R. 107, 108). Hood also saw the other officer (Somerville) recover a capsule from the ground in the alley (R. 107), the capsule containing a white powder, and Hood, from his experience, knew that this was the way heroin was sold and dispensed (R. 109, 119). Appellant was then brought to the Narcotic Squad office, where a search of his person revealed additional capsules of heroin (R. 108).

Also testifying at the hearing on the motion was officer Joseph W. Somerville of the Metropolitan Police Department (R. 116). This officer corroborated the testimony of officer Hood in regard to the stopping of appellant to see his permit (R. 120), and appellant's flight from his automobile (R. 118).

Officer Somerville stated, that as appellant left the car and raced to the alley, he pulled something from his pocket and threw it to the ground (R. 118, 123). Somerville then picked up the capsule of white powder at approximately the same time as Hawkins caught appellant (R. 124).

B. The trial

At the trial, both officer Hood (J. A. 6–11) and officer Somerville (J. A. 12–14), testified as to the same facts and events which they had earlier testified to at the hearing on the motion.

The Government also called as a witness, officer John W. Hawkins,[1] of the Metropolitan Police Department (J. A. 14). Officer Hawkins gave testimony regarding the flight of appellant from his car (J. A. 15), and his throwing away of an object in the alley (J. A. 17, 18). Officer Hawkins then caught appellant in the alley on the 700 block of Farragut Street (J. A. 16). On arriving at the Narcotic Squad office, Hawkins then searched appellant and removed from his inside coat pocket, three gelatin capsules with white powder (J. A. 15).

No testimony was offered on behalf of appellant, who chose to stand on his motion (J. A. 21).

STATUTES INVOLVED

Title 21 U.S.C. § 174 provides:

> *Same: penalty: evidence.*—Whoever fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or receives, conceals, buys, sells or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported or brought into the United States contrary to law, or conspires to commit any of such acts in violation of the laws of the United States, shall be imprisoned not less than five or more than twenty

[1] An additional witness, William Butler, a chemist in the Internal Revenue Service, testified, that the capsules contained heroin hydrochloride, the heroin being a derivative of opium (J. A. 19).

years and, in addition, may be fined not more than $20,000. For a second or subsequent offense (as determined under section 7237 (c) of the Internal Revenue Code of 1954), the offender shall be imprisoned not less than ten or more than forty years and, in addition, may be fined not more than $20,000.

Whenever on trial for a violation of this subsection the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury.

Title 26 U. S. C. § 4704 (a)—General requirement provides:

It shall be unlawful for any person to purchcase, sell, dispense, or distribute narcotic drugs except in the original stamped package or from the original stamped package; and the absence of appropriate tax paid stamps from narcotic drugs shall be prima facie evidence of a violation of this subsection by the person in whose possession the same may be found.

Title 40, District of Columbia Code (1951 Edition) § 302 (a) provides in pertinent part:

(a) Except where for any violation of this chapter revocation of the operator's permit is mandatory, the Commissioners or their designated agent may with or without a prior hearing revoke or suspend an operator's permit for any cause which they or their agent may deem sufficient: *Provided,* That in each case where a permit is revoked or suspended the reasons therefor shall be set out in the order of revocation or suspension: *Provided further,* That such order shall take effect five days after its issuance unless the holder of the permit shall have filed within such period, written application with the Commissioners of the District of Columbia for a review of their order or the order of their agent, and, if upon such review, the Commissioners shall sustain such order, the same shall become effective immediately: *Provided further,* That application to said Commis-

> sioners for a review shall not operate as a stay of such order of the commissioners or their agent when the order has been issued revoking or suspending a permit on account of mental or physical incapacity, for driving under the influence of liquor or narcotic drugs; for manslaughter when an automobile is involved, or for operating a motor vehicle equipped with a smoke screen: . . . .

SUMMARY OF ARGUMENT

Where a person driving a motor vehicle is known by the police to be a convicted narcotic drug peddler and user, and it is further known that such persons are deprived of permits to drive motor vehicles, the police may approach that person and inquire as to whether or not he has a driving permit.

When that person then flees upon being approached by the police they may give chase and apprehend him.

If the person pursued throws a capsule of narcotics away, the recovery and examination of the capsule by the police does not constitute a search.

A later search of one apprehended under such circumstances is valid since incidental to a lawful arrest.

ARGUMENT

The search and seizure were valid

Appellant was known to police officer Virgil J. Hood as a convicted narcotic drug peddler and user (R. 104, 105). As an experienced police officer (R. 104) and a member of the narcotic squad, officer Hood knew that narcotic peddlers and users are persons who are deprived of their driving permits, once such information is brought to the attention of the Office of Traffic and Vehicles, as it is in the case of those arrested or convicted of narcotic violations.[2] With such knowledge, he saw appellant

[2] Pursuant to Title 40, D. C. C. (1951 Ed.) § 302 (a), the Director of Vehicles and Traffic, as the lawfully designated agent of the Commissioners of the District of Columbia, has set down policies regarding revocation of driving permits. One revocation policy of long standing is in regard to those who are found to be narcotic drug peddlers and users. (This policy is to be distinguished from that in regard to those who are found driving

on the date in question, operating a motor vehicle (R. 102). While police officers may not stop every traveler along a public highway or thoroughfare at their whim, operators of motor vehicles may be detained and inquired of if such inquiry is reasonable under the facts and circumstances. *Brinegar* v. *United States,* 338 U. S. 160, 93 L. Ed. 1879, 69 S. Ct. 1302 (1949), *reh. denied,* 338 U. S. 839, October 10, 1949. Here, the facts and circumstances were such that officer Hood was entitled to move his vehicle abreast of appellant's and inquire of the latter as to whether or not he possessed a driving permit. The officer's action was clearly within "the rule of reasonable—for—the—purposes—of—information", and constituting reasonable inquiry it was not unlawful. *Trilling* v. *United States,* —— U. S. App. D. C. ———, (Nos. 13069, 13165 and 13212; decided April 17, 1958), at page 48 (Opinion of Prettyman, J.).

As the police car drew alongside that of appellant's, he jumped out the right hand side of his automobile and began to run (R. 103, 106; J. A. 7, 9, 14). Under these circumstances, not only were the police not obliged to end the initial inquiry which had been frustrated by appellant's dash from the car, but they were under a duty to continue. Appellant's peculiar conduct alone gave rise to such duty, but coupled with the fact that he was a known convicted narcotic violator merely served to enforce it. *Cf. Price* v. *United States,* D. C. Mun. App., 119 A. 2d 718, 720 (1956). In addition, "the apparent attempt to escape under the circumstances here shown was seemingly an attempt to avoid the consequences of [an offense] being committed and enough to give the officers reasonable cause [to pursue] and arrest the appellant". *Levine* v. *United States,* 138 F. 2d 627, 628, 629 (2d Cir. 1943).

Here, the conduct of the police officers in pursuing and apprehending appellant, clearly meets the standard of reasonableness required by the test of the "reasonable, cautious, and

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under the influence of a narcotic drug.) Appellant's permit was revoked on September 17, 1952, after his arrest on a narcotic charge, on the ground that he was a person physically unfit to operate a motor vehicle. To this date, the permit has never been restored.

prudent peace officer under the circumstances of the moment". *Bell* v. *United States*, — U. S. App. D. C. — (No. 13684; decided January 23, 1958).

As the appellant was followed into the alley, he was observed to throw an object from his person (R. 118, 123; J. A. 8, 12, 17, 18). The object recovered was a gelatin capsule containing a white powder, which to the experienced eye of the police, was the manner in which heroin was sold and dispensed (R. 109, 119; J. A. 12). The disclosure of the capsule was not obtained as a result of a search and seizure, but through the appellant's own acts, and "there was no seizure in the sense of the law when the officers examined [what appellant] had * * * abandoned". *Hester* v. *United States*, 265 U. S. 57, 58, 68 L. Ed. 898, 44 S. Ct. 445 (1924). See also *Lee* v. *United States*, 95 U. S. App. D. C. 156, 221 F. 2d 29 (1954).

Appellant was subsequently taken to the office of the Narcotics Squad, and searched, and three additional capsules containing narcotics were removed from his person (R. 108; J. A. 15). This search and seizure took place after the lawful arrest of appellant following his flight from the automobile, and after he had abandoned the first capsule of heroin found in the alley. The search having taken place subsequent to appellant's valid arrest, and being incidental thereto, was clearly legal. *Bell* v. *United States, supra*, pages 9 and 10 of the slip opinion.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court be affirmed.

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